

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040804229-4300-02; I.D. 010606A-X]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for Western and Eastern U.S./Canada Areas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; landing limit.

SUMMARY: NMFS announces that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), is implementing a yellowtail flounder trip limit of 1,500 lb (680.4 kg) per day, up to a maximum of 15,000 lb (6,804.1 kg) per trip, for NE multispecies Days-at-Sea (DAS) vessels fishing in both the Western and Eastern U.S./Canada Areas. This action is required by the regulations enacting Amendment 13 to the NE Multispecies Fishery Management Plan and is necessary to prevent the GB yellowtail flounder total allowable catch (TAC) from being caught before the end of the 2005 fishing year and to increase the likelihood that the GB yellowtail TAC will be available through the end of the 2005 fishing year on April 30, 2006. This action is being taken to slow the rate of harvest of GB yellowtail flounder under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective 0001 hrs local time, February 9, 2006, through April 30, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281-9145, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: Regulations governing the yellowtail flounder landing limit within the Western and Eastern U.S./Canada Areas are found at 50 CFR

648.85(a)(3)(iv)(C). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2005 fishing year is 4,260 mt. When 70 percent (2,982 mt) of the GB yellowtail flounder TAC is projected to be harvested, the regulations at § 648.85(a)(3)(iv)(C)(2) require the Regional Administrator to implement and/or adjust the yellowtail flounder landing limit for NE multispecies vessels fishing in both the Western and Eastern U.S./Canada Areas to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

When approximately 59 percent of the GB yellowtail flounder TAC was harvested, NMFS implemented a yellowtail flounder landing limit of 15,000 lb (6,804.1 kg) per trip to slow the rate of catch for this stock (December 22, 2005; 70 FR 75965). Based upon Vessel Monitoring System (VMS) reports and other available information, the Regional Administrator has determined that 70 percent (2,982 mt) of the GB yellowtail flounder TAC of 4,260 mt will be harvested by February 8, 2006. Based on this information, the Regional Administrator is reducing the GB yellowtail trip limit from 15,000 lb (6,804.1 kg) per trip to 1,500 lb (680.4 kg) per day, up to a maximum of 15,000 lb (6,804.1 kg) per trip, for NE multispecies DAS vessels fishing in both the Western and Eastern U.S./Canada Areas trip, effective February 8, 2006, through April 30, 2006. Vessels that have already declared their intent to fish in the Western

U.S./Canada Area through VMS, departed on a trip, and crossed the demarcation line as of 0001 hours on February 8, 2006, may possess and land up to 15,000 lb (6,804.1 kg) of GB yellowtail flounder, regardless of the length of their trip.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment for this action, because notice and comment would be impracticable and contrary to the public interest. The regulations at § 648.85(a)(3)(iv)(C)(2) require the Regional Administrator to implement and/or adjust the yellowtail flounder landing limit for NE multispecies vessels fishing in both the Western and Eastern U.S./Canada Areas to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip when 70 percent (2,982 mt) of the GB yellowtail flounder TAC is projected to be harvested. Based upon VMS reports and other available information, the Regional Administrator has determined that 70 percent (2,980 mt) of the GB yellowtail flounder TAC of 4,260 mt will be harvested by February 8, 2006. Therefore, this action is non-discretionary. In addition, there exists insufficient time to allow for public notice and comment before 70 percent of the TAC will be harvested.

Given the rapidly increasing harvest rate and the reduced GB yellowtail flounder TAC specified for 2005, the time necessary to provide for prior notice and opportunity for public comment would prevent the agency from ensuring that the 2005 TAC for GB yellowtail flounder is not exceeded during the 2005 fishing year. It was not possible to take this action earlier to

provide more time for public comment because of how quickly the GB yellowtail flounder was harvested, the rapidly increasing harvest rate, the reduced GB yellowtail flounder TAC, and the ability of NMFS to monitor the harvest (the projection that 70 percent of the GB yellowtail TAC would be harvested by February 8, 2006, was not available until February 3, 2006).

Exceeding the 2005 TAC for GB yellowtail flounder would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13, potentially undermining the rebuilding efforts for this stock. Moreover, should the GB yellowtail flounder TAC be exceeded, any overages would be deducted from the 2006 GB yellowtail flounder TAC. This would result in decreased revenue for the NE multispecies fishery, increased economic impacts to vessels operating in the Western and Eastern U.S./Canada Areas, reduced opportunities to fully harvest the GB haddock and GB cod TAC's in the Eastern U.S./Canada Area (i.e., through the increased possibility of premature closure of the Eastern U.S./Canada Area during the 2006 fishing year due to fully harvesting a reduced GB yellowtail flounder TAC in 2006), a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock.

For similar reasons there is good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the entire 30-day delayed effectiveness period for this action. For the reasons specified above, a delay in the effectiveness of the trip limit modification in this rule would prevent the agency from meeting its management obligation and ensuring that the 2005 catch TAC for GB yellowtail flounder specified for the Western and Eastern U.S./Canada Areas would not be exceeded during the 2005 fishing year. Any such delay could lead to the impacts to the fishing industry described above.

The rate of harvest of the GB yellowtail flounder TAC in the Western and Eastern U.S./Canada Areas is updated weekly on the internet at <http://www.nero.noaa.gov>. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action to prevent the TAC for GB yellowtail flounder from being exceeded during the 2005 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

Authority: 16 U.S.C. 1801 et seq.

Dated:
